

IN THE UNITED STATES DISTRICT COURT  
FOR THE  
EASTERN DISTRICT OF PENNSYLVANIA

1  
2 CURTIS STANCIL,  
3

4 Plaintiff  
5 v.  
6 NCO FINANCIAL SYSTEMS, INC.,  
7 Defendant  
8

FILED 11 3974

JUN 20 Case No.: 11-3974

By Dep. Clerk

COMPLAINT AND DEMAND FOR  
JURY TRIAL

(Unlawful Debt Collection Practices)

10 **COMPLAINT**

11 CURTIS STANCIL (“Plaintiff”), by his attorneys, KIMMEL & SILVERMAN, P.C.,  
12 alleges the following against NCO FINANCIAL SYSTEMS, INC. (“Defendant”):  
13

14 **INTRODUCTION**

15 1. Plaintiff’s Complaint is based on the Fair Debt Collection Practices Act, 15  
16 U.S.C. § 1692 *et seq.* (“FDCPA”), which prohibits debt collectors from engaging in abusive,  
17 deceptive, and unfair practices and the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et*  
18 *seq.* (“TCPA”).  
19

20 **JURISDICTION AND VENUE**

21 2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states  
22 that such actions may be brought and heard before “any appropriate United States district court  
23 without regard to the amount in controversy,” and 28 U.S.C. § 1331 grants this court original  
24 jurisdiction of all civil actions arising under the laws of the United States.  
25

1       3. Defendant conducts business and has an office in the Commonwealth of  
2 Pennsylvania and therefore, personal jurisdiction is established.

3       4. Venue is proper pursuant to 28 U.S.C. § 1331(b)(1).

4       5. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202.  
5  
6

## PARTIES

7       6. Plaintiff is a natural person residing in Hamden, Connecticut, 06514.  
8  
9       7. Plaintiff is a “consumer” as that term is defined by 15 U.S.C. § 1692a(3).  
10      8. Defendant is a national debt collection company with corporate headquarters  
located at 507 Prudential Road in Horsham, Pennsylvania, 19044.  
11

12      9. Defendant is a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6),  
13 and repeatedly contacted Plaintiff in an attempt to collect a debt.  
14  
15     10. Defendant acted through its agents, employees, officers, members, directors,  
heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.  
16  
17

## FACTUAL ALLEGATIONS

18     11. At all relevant times, Defendant was attempting to collect an alleged consumer  
19 debt owed to Wal-Mart from Plaintiff.  
20

21     12. The alleged debt at issue arose out of transactions, which were primarily for  
personal, family, or household purposes.  
22

23     13. Beginning in or before November 2010, and continuing until March 2011,  
24 Defendant, its agents, employees, and servants, engaged in debt collection activities seeking  
25 payment from Plaintiff.

1       14. Defendant, its employees and servants harassed Plaintiff by making continuous  
2 calls to his cellular telephone number, home telephone number and work telephone number.

3       15. Defendant placed repeated calls to Plaintiff's telephone almost every day, causing  
4 Plaintiff to receive, at times, between three (3) and four (4) collection calls a day.

5       16. Further, upon information and belief, when contacting Plaintiff on his cellular  
6 telephone, Defendant used an automated telephone dialing system, pre-recorded, or artificial  
7 voice.

8       17. Plaintiff did not expressly consent to Defendant's placement of telephone calls to  
9 his cellular telephone by the use of an automatic telephone dialing system or pre-recorded or  
10 artificial voice prior to Defendant's placement of the calls.

12       18. None of Defendant's telephone calls placed to Plaintiff were for "emergency  
13 purposes," as specified in 47 U.S.C. §227(b)(1)(A).

14       19. On at least one occasion, Defendant called Plaintiff's place of employment and  
15 began to argue with a secretary, demanding to speak with Plaintiff.

16       20. The secretary would not let Defendant speak to Plaintiff, who was in the room at  
17 the time of the telephone call.

18       21. Defendant became persistent and kept asking the secretary the reason why it  
19 could not speak with Plaintiff.

21       22. The secretary repeatedly informed Defendant that Plaintiff was not allowed to  
22 take personal calls at work and if Defendant needed to reach Plaintiff it could call his home  
23 telephone.

24       23. Defendant's actions in attempting to collect the alleged debt were harassing,  
25 abusive and highly deceptive.

**THE FAIR DEBT COLLECTION PRACTICES ACT**

24. The FDCPA is a comprehensive statute, which prohibits a catalog of activities in  
connection with the collection of debts by third parties. See 15 U.S.C. § 1692 *et seq.* The  
FDCPA imposes civil liability on any person or entity that violates its provisions, and  
establishes general standards of debt collector conduct, defines abuse, and provides for specific  
consumer rights. 15 U.S.C. § 1692k. The operative provisions of the FDCPA declare certain  
rights to be provided to or claimed by debtors, forbid deceitful and misleading practices,  
prohibit harassing and abusive tactics, and proscribe unfair or unconscionable conduct, both  
generally and in a specific list of disapproved practices.

25. In particular, the FDCPA broadly enumerates several practices considered  
contrary to its stated purpose, and forbids debt collectors from taking such action. The  
substantive heart of the FDCPA lies in three broad prohibitions. First, a “debt collector may not  
engage in any conduct the natural consequence of which is to harass, oppress, or abuse any  
person in connection with the collection of a debt.” 15 U.S.C. § 1692d. Second, a “debt  
collector may not use any false, deceptive, or misleading representation or means in connection  
with the collection of any debt.” 15 U.S.C. § 1692e. And third, a “debt collector may not use  
unfair or unconscionable means to collect or attempt to collect any debt.” 15 U.S.C. § 1692f.  
The FDCPA is designed to protect consumers from unscrupulous collectors, whether or not  
there exists a valid debt, broadly prohibits unfair or unconscionable collection methods, conduct  
which harasses, oppresses or abuses any debtor, and any false, deceptive or misleading  
statements in connection with the collection of a debt.

26. In enacting the FDCPA, the United States Congress found that “[t]here is  
abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many  
debt collectors,” which “contribute to the number of personal bankruptcies, to marital instability,

1 to the loss of jobs, and to invasions of individual privacy.” 15 U.S.C. §1692a. Congress  
 2 additionally found existing laws and procedures for redressing debt collection injuries to be  
 3 inadequate to protect consumers. 15 U.S.C. §1692b.

4       27. Congress enacted the FDCPA to regulate the collection of consumer debts by  
 5 debt collectors. The express purposes of the FDCPA are to “eliminate abusive debt collection  
 6 practices by debt collectors, to insure that debt collectors who refrain from using abusive debt  
 7 collection practices are not competitively disadvantaged, and to promote consistent State action  
 8 to protect consumers against debt collection abuses.” 15 U.S.C. §1692e.  
 9

10      28. The FDCPA is a strict liability statute. Taylor v. Perrin, Landry, deLaunay &  
 11 Durand, 103 F.3d 1232 (5th Cir. 1997). “Because the Act imposes strict liability, a consumer  
 12 need not show intentional conduct by the debt collector to be entitled to damages.” Russell v.  
 13 Equifax A.R.S., 74 F. 3d 30 (2d Cir. 1996); see also Gearing v. Check Brokerage Corp., 233  
 14 F.3d 469 (7th Cir. 2000) (holding unintentional misrepresentation of debt collector’s legal status  
 15 violated FDCPA); Clomon v. Jackson, 988 F. 2d 1314 (2d Cir. 1993).

16      29. The FDCPA is a remedial statute, and therefore must be construed liberally in  
 17 favor of the debtor. Sprinkle v. SB&C Ltd., 472 F. Supp. 2d 1235 (W.D. Wash. 2006). The  
 18 remedial nature of the FDCPA requires that courts interpret it liberally. Clark v. Capital Credit  
 19 & Collection Services, Inc., 460 F. 3d 1162 (9th Cir. 2006). “Because the FDCPA, like the  
 20 Truth in Lending Act (TILA) 15 U.S.C §1601 *et seq.*, is a remedial statute, it should be  
 21 construed liberally in favor of the consumer.” Johnson v. Riddle, 305 F. 3d 1107 (10th Cir.  
 22 2002).

24      30. The FDCPA is to be interpreted in accordance with the “least sophisticated”  
 25 consumer standard. See Jeter v. Credit Bureau, Inc., 760 F.2d 1168 (11th Cir. 1985); Graziano  
v. Harrison, 950 F. 2d 107 (3<sup>rd</sup> Cir. 1991); Swanson v. Southern Oregon Credit Service, Inc.,

1 869 F.2d 1222 (9th Cir. 1988). The FDCPA was not "made for the protection of experts, but for  
 2 the public - that vast multitude which includes the ignorant, the unthinking, and the credulous,  
 3 and the fact that a false statement may be obviously false to those who are trained and  
 4 experienced does not change its character, nor take away its power to deceive others less  
 5 experienced." Id. The least sophisticated consumer standard serves a dual purpose in that it  
 6 ensures protection of all consumers, even naive and trusting, against deceptive collection  
 7 practices, and protects collectors against liability for bizarre or idiosyncratic interpretations of  
 8 collection notices. Clomon, 988 F. 2d at 1318.  
 9

10

11 **THE TELEPHONE CONSUMER PROTECTION ACT OF 1991**

12 31. In 1991, Congress enacted the TCPA, in response to a growing number of  
 13 consumer complaints regarding certain telemarketing practices.

14 32. The TCPA regulates, among other things, the use of automated telephone  
 15 equipment, or "autodialers." Specifically, the plain language of section 227(b)(1)(A)(iii)  
 16 prohibits the use of autodialers to make any call to a wireless number in the absence of an  
 17 emergency or the prior express consent of the called party.

18 33. According to findings by the Federal Communication Commission ("FCC"), the  
 19 agency Congress vested with authority to issue regulations implementing the TCPA, such calls  
 20 are prohibited because, as Congress found, automated or prerecorded telephone calls are a  
 21 greater nuisance and invasion of privacy than live solicitation calls, and such calls can be costly  
 22 and inconvenient. The FCC also recognized that wireless customers are charged for incoming  
 23 calls whether they pay in advance or after the minutes are used.

25 34. On January 4, 2008, the FCC released a Declaratory Ruling wherein it confirmed  
 that autodialed and prerecorded message calls to a wireless number by a creditor (or on behalf of

a creditor) are permitted only if the calls are made with the "prior express consent" of the called party. The FCC "emphasize[d] that prior express consent is deemed to be granted only if the wireless number was provided by the consumer to the creditor, and that such number was provided during the transaction that resulted in the debt owed."

5  
6  
**COUNT I**

7     **DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT**

8     35. Plaintiff hereby incorporates all facts and allegations specified in all preceding  
9 paragraphs, by reference as if fully set forth at length.

10    36. In its actions to collect a disputed debt, Defendant violated the FDCPA in one or  
11 more of the following ways:

- 13       a. Defendant violated of the FDCPA generally;
- 14       b. Defendant violated §1692c(a)(3) of the FDCPA by contacting Plaintiff at his  
15              place of employment, and demanding to speak with him after being advised  
16              that telephone calls to his place of employment were not permitted;
- 17       c. Defendant violated §1692d of the FDCPA by harassing Plaintiff in  
18              connection with the collection of an alleged debt;
- 19       d. Defendant violated §1692d(5) of the FDCPA, when it caused the Plaintiff's  
20              telephone to ring repeatedly or continuously with the intent to harass, annoy  
21              or abuse Plaintiff;
- 22       e. Defendant violated §1692e of the FDCPA by using false, deceptive, or  
23              misleading representations or means in connection with the collection of a  
24              debt;
- 25       f. Defendant violated §1692f of the FDCPA by using unfair and unconscionable

1 means with Plaintiff to collect or attempt to collect a debt; and

2 g. Defendant acted in an otherwise deceptive, unfair and unconscionable manner  
3 and failed to comply with the FDCPA.

4

5 **COUNT II**

6 **DEFENDANT VIOLATED THE TELEPHONE CONSUMER PROTECTION ACT**

7 37. Plaintiff hereby incorporates all facts and allegations specified in all preceding  
8 paragraphs, by reference as if fully set forth at length.

9 38. The Telephone Consumer Protection Act (“TCPA”), codified at 47 U.S.C. § 227  
10 *et seq.*, prohibits the use of an automated or pre-recorded voice to a consumer on any number  
11 assigned to a cellular phone. See 47 U.S.C. § 227(b)(1)(A)(iii).

12 39. A person may bring a private cause of action “based on a violation of this  
13 subsection or the regulations prescribed under this subsection to enjoin such violation” under §  
14 227(b)(3)(A) of the TCPA.

15 40. A person is entitled to bring “an action to recover for actual monetary loss from  
16 such a violation, or to receive \$500 in damages for each such violation, whichever is greater”  
17 under § 227(c)(5)(B) of the TCPA.

18 41. The Court, in its discretion, is authorized to award up to three (3) times the actual  
19 damages sustained for Defendant’s violations by § 227(c)(5) of the TCPA.

20 45. Defendant repeatedly and regularly placed automated calls to Plaintiff’s cellular  
21 telephone, leaving several pre-recorded or automated messages.

22 46. Defendant’s conduct violated § 227(b)(1)(A)(iii) of the TCPA by making any call  
23 using any automatic telephone dialing system or an artificial prerecorded voice to a telephone  
24 number assigned to a cellular telephone service.

1 WHEREFORE, Plaintiff, CURTIS STANCIL, respectfully prays for a judgment as  
2 follows:

3 a. All actual compensatory damages suffered pursuant to 15 U.S.C. §  
4 1692k(a)(1);  
5 b. Statutory damages of \$1,000.00 for the violation of the FDCPA pursuant  
6 to 15 U.S.C. § 1692k(a)(2)(A);  
7 c. All reasonable attorneys' fees, witness fees, court costs and other litigation  
8 costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3);  
9 d. Statutory damages of \$500 for each violation of the TCPA, pursuant to 47  
10 U.S.C. § 227(c)(5)(B); and  
11 e. Any other relief deemed appropriate by this Honorable Court.

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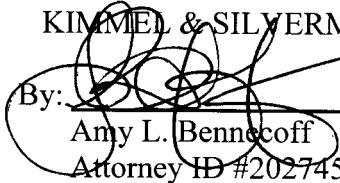
14 **DEMAND FOR JURY TRIAL**

15 PLEASE TAKE NOTICE that Plaintiff, CURTIS STANCIL, demands a jury trial in this  
16 case.

17  
18 RESPECTFULLY SUBMITTED,

19 DATED: 06/17/11

20 KIMMEL & SILVERMAN, P.C.

21 By: 

22 Amy L. Bennecoff  
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